XII-189 (Jail) C J.P.R.-/9-94

CF0000066900

(2)

Cri # 2453/98 SB(Cri)

APPEAL OF PRISONER CA: 1300/63

No JAIPUR JO Name
दण्डित बन्दी क्रमांक 1309/58 दद्दुआ उर्फ थानेश

Father's name जनार्दन प्रसाद दुबे

Residence मु0 बल्लीपाड़ा थाना बिल्हा कापुर (बिलासपुर) Age 26 वर्ष

Sentenced to ① 363, 366 भा.द.वि.
② 363, 366, 376 भा.द.वि.

on 25, 09, 98

Under Section ~~① २७१ - ३१४ वर्ष - २५०/-~~ by ~~प्रथम श्रेणी अति० न्यायाधीश~~
~~② ३५४ - ३५४ वर्ष - ३५०/-~~ ~~पो-हाबर्ड मोहल्ला भटेरा बिल्हा कापुर (म0प्र0)~~

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement N

2 Date of copy received X

3 Date on which Appeal sent 15-10-98

4 Whether the prisoner wishes to be represented or not. Yes

No दण्डित बन्दी क्रमांक 1309/58 Name दद्दुआ उर्फ थानेश पि0 जनार्दन प्रसाद दुबे

Confined in बिलासपुर Jail बिलासपुर (मध्य-प्रदेश)

No. _____ Dated _____ 199 _____

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय जबलपुर (म0प्र0)

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
कृते, जेल
बिलासपुर (म0प्र0)

15/10/98
Superintendent
Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal Nos. 2454 of 1998

APPELLANT **Ramchandra**

Versus

RESPONDENT **State of C.G.**

Criminal Appeal No. 1300 of 2003

APPELLANT **Dadua @ Thanesh**

Versus

RESPONDENT **State of C.G.**

Shri A.K.Prasad & Shri Abhay Tiwari, counsel for the appellants.
Shri J.D.Bajpai, G.A. & Shri Ravindra Agrawal, P.L. for the State.

As both the Criminal Appeals mentioned above arise out of the same judgment dated 25.09.98 passed by the trial Court, they are being disposed of by this common judgment.

JUDGMENT

(Delivered on 25th-1-2006)

The appellant Ramchandra has preferred Criminal Appeal No. 2454/1998 on 26.10.98 against the judgment dated 25.09.98 passed by First Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No. 374/97 whereby appellants Ramchandra and Dadua @ Thanesh have been convicted for the offences under Sections 368 of the IPC. Appellant Ramchandra has been sentenced to undergo RI for seven years. Criminal Appeal No. 1300/2003 has been registered on the basis of letter written by appellant Dadua @ Thanesh from jail which was taken up for the first time on 10.12.2003 by this Court.

HIGH COURT OF CHHATTISGARH BILASPUR

2. Appellant Dadua @ Thanesh has been convicted by the impugned judgment for the offences under Sections 363,366 and 376 (1) of

the IPC and sentenced to undergo RI for seven years on each count. All the sentences have been directed to run concurrently.

3. Case of the prosecution in brief is that the prosecutrix Radhika aged about 14 years at the relevant time lodged a report on 23.04.1992 at about 4.00 – 5.00 a.m. in police station Ambikapur alleging that when she was going to watch a movie along with her husband, appellant Dadua @ Thanesh abducted her on the point of knife and took her to village Basant Ulia on scooter and confined her there in a room of his aunt till 21.04.92. She further alleged that appellant Dadua @ Thanesh again took her forcibly on the scooter at about 9.00 p.m. to village Satipara and confined her there in the vacant house of one Chamru Baiga up to 22.04.92. However she somehow managed to escape in the morning of 23.04.92 and went to her maternal uncle namely Arun Giri's house in village Silphili. She also alleged that appellant Dadua @ Thanesh raped her twice on 20.04.92 in village Basant Ulia. She further stated that she lodged a report of Ex.P.1 after her father Kanchhedi Puri came to village Silphili. During investigation, accused was examined on 21.07.92. Medical report is Ex.P.5. Progress report of the prosecutrix (Ex.P.3) was seized on 21.07.92. The prosecutrix was medically examined by Dr. (Smt.) Rashmi Verma on 01.05.92 vide Ex.P.8. The doctor prepared vaginal slides which were seized by Ex. P.7. Charge sheet was filed under Sections 341, 342, 363, 376 and 368 of the IPC in the Court of Chief Judicial Magistrate, Ambikapur who in turn committed the case to Session Judge, Ambikapur from where First Additional Sessions Judge Ambikapur received the case on transfer for trial. Charges under Sections 363, 366, 368 and 376 (2) (g) of the IPC were framed against the appellants. The appellants abjured their guilt.

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4. During trial the prosecution examined in all five witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Cr.P.C. The appellants denied the allegations made by the witnesses and after hearing counsel for the appellants they have been convicted and sentenced by the First Additional Sessions Judge, Ambikapur as mentioned above. Hence this appeal.

5. Learned trial Court on the basis of the statement of the prosecutrix and after considering her progress report (Ex.P.3) has arrived at the conclusion that the date of birth of the prosecutrix is 04.09.77 and as such on the date of incident i.e. 20.04.92 she was less than 15 years of age. So far as the progress report of the prosecutrix relied upon by the trial Court is concerned though it has been seized by the prosecution and proved by it but the author of this document has not been examined, therefore same cannot be taken to be the conclusive proof of date of birth of the prosecutrix.

6. So far as the statement of P.W.2 Kanchhedi Puri is concerned in examination in chief he has mentioned the age of the prosecutrix to be 14 years however in the cross examination he has stated that he has in all two sons and two daughters and the eldest daughter was 30 years on the date i.e. 5.06.98 when he was examined and the prosecutrix is five-six years younger to her. Thus the age of the prosecutrix according to the father of the prosecutrix might be 18 to 19 years on 20.04.92 i.e. the date of incident and therefore the possibility of the prosecutrix being more than 18 years of age on the date of incident cannot be ruled out. Thus, from the evidence on record it cannot be held that the prosecution was able to establish

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the age of prosecutrix to be less than 15 years on the date of incident.

7. The second question for consideration is whether the prosecution was able to establish that appellant Dadua @ Thanesh abducted the prosecutrix on 20.04.92 and thereafter kept her in confinement till the morning of 23.04.92. As per the allegation contained in the FIR the prosecutrix was abducted while she was going with her husband to watch movie from near a typing centre and thereafter she was taken to village Basant Ulia on scooter with two other associates. She was kept in confinement up to 21.04.92 in the house of his aunt and thereafter she was shifted to Satipara and confined there in the vacant house of Chamru Baiga and was subjected to rape. However prosecutrix P.W.1 has stated in her statement that when she was abducted in the afternoon while going alone towards the ground. She has stated that appellant Dadua @ Thanesh took her to Manindragarh Naka from where he took her by bus to the house of appellant Ramchandra and there he kept her in confinement for six-seven days and raped her on 14 -15 occasions and seven days thereafter he took her to Ambikapur bus stand. Thereafter she lodged a report with her father. In the cross-examination she has admitted that appellant Dadua @ Thanesh was her neighbour and they were acquainted with each other and appellant Dadua @ Thanesh had forcibly married her in the Court. However only 10-15 days after their marriage they took divorce. She also admitted that her parents were aware about their marriage and after marriage they lived together and during that period her father did not lodge any report. It appears from the record that even on the date of examination in the Court she was residing in the house of the father of the appellant. Prosecutrix lodged the report showing herself to be the wife of one Jaspal Giri but said Jaspal Giri

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has not been examined by the prosecution. The factum of marriage is further corroborated by the statement of P.W.2 Kanchhedi Puri who has admitted in paragraph 3 of his statement that his daughter was married just one week before the date of incident. The doctor who examined the prosecutrix has submitted her report Ex.P.8 and opined that there was no internal or external injury on the person of the prosecutrix as she was habitual to sexual intercourse and therefore no definite opinion regarding recent rape can be given.

8. Thus taking into consideration the complete variance in the statement of the prosecutrix and in the FIR (Ex.P.1) and further considering that the report was lodged after seven days of the incident when she had allegedly fled away from the confinement and also considering the fact that she herself has admitted her marriage with the appellant Dadua @ Thanesh, I am of the considered opinion that the prosecution has utterly failed to prove the factum of abduction of minor girl from the lawful custody of guardian and thus the findings of the trial Court convicting the appellant namely Dadua @ Thanesh for the said offence cannot be sustained.

9. So far as accused/appellant Ramchandra is concerned he has been convicted by the trial Court under Section 368 of the IPC and sentenced to undergo RI for seven years. For the purpose of convicting any person charge under Section 368 of the IPC, it is required to be proved that the person charged had wrongfully concealed or confined the abducted person knowing that such person has been kidnapped or abducted. If the evidence available on record is scrutinized then we come to the conclusion that the only allegation against Ramchandra is that accused/appellant Dadua @ Thanesh took the prosecutrix to his house and kept her

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there for six-seven days. There is no evidence on record to show that the appellant confined or concealed the prosecutrix knowing that she was kidnapped or abducted by appellant Dadua @ Thanesh and the findings of the trial Court in this regard are based on presumption. There is no evidence on record to draw such a conclusive presumption against the appellant as none of the witnesses has stated that appellant Ramchandra was aware that the prosecutrix was brought to his house after being kidnapped or that he confined or concealed her in his house. Thus, the findings of the Court below in this regard are without any substance and the same cannot be sustained.

10. Thus, on the basis of the aforesaid analysis the instant appeal is allowed, judgment of conviction and sentence recorded by the trial Court is set aside and the appellants are acquitted of the charges leveled against them. Appellant Dadua @ Thanesh in Cr. A. No. 1300/2003 is directed to be set at liberty forthwith if not required in any other case. Since appellant Ramchandra is already on bail, his bail bonds are discharged.

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Sd/-
DHIRENDRA MISHRA
Judge